

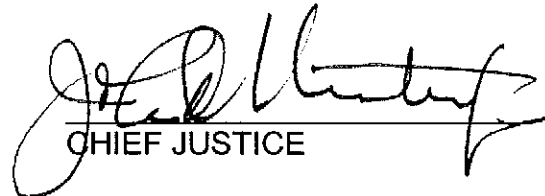
Supreme Court of Kentucky

ORDER

**IN RE: COURT RULES FOR PRETRIAL DIVERSION FOR THE 33rd
JUDICIAL DISTRICT OF PERRY COUNTY**

Pursuant to KRS 533.262 and SCR 1.040(3)(a), and upon recommendation of the Judges of District Court, and being otherwise sufficiently advised: the Court Rules for the Perry County Pretrial Diversion, attached hereto, are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this court.

Entered this 19th day of November, 2008.


CHIEF JUSTICE

PERRY COUNTY PRETRIAL DIVERSION RULES

Eligibility Requirements

1. All persons charged in District Court with the commission of a misdemeanor shall be eligible for participation in the Administrative Office of the Courts Pretrial Services Diversion Program (Program) as an alternative to criminal prosecution, subject to the following conditions and exceptions:
 - a. The charge of violation of KRS Chapter 189A shall not be diverted;
 - b. A person who has previously participated in a pretrial diversion program shall not be eligible for participation in the Program, unless the trial judge and prosecutor deem a defendant eligible for the Program regardless of his/her ineligibility;
 - c. A person charged with a violent offense shall not be diverted; and
 - d. A felony amended to a misdemeanor is eligible for the Program if agreed upon by the trial judge and prosecutor.
2. Nothing in this rule shall be deemed to limit the authority of the county attorney to withdraw criminal prosecution in any given case.

Participation

1. Upon consent of both the county attorney and the defendant, the trial judge shall approve participation in the Program for any individual who meets the eligibility requirements established in Section A above unless the trial judge, in his/her discretion believes that:
 - a. There is a substantial risk that the defendant will abscond from the jurisdiction of the court prior to fulfillment of the terms of the contract;
 - b. There is a substantial risk that the defendant will commit another crime prior to the fulfillment of the terms of the diversion contract;
 - c. The defendant is in need of correctional treatment that can be provided most effectively by commitment to the county jail; or
 - d. Participation in the Program would unduly depreciate the seriousness of the defendant's crime.
2. The county attorney's consent to a defendant's participation in the Program shall not be unreasonably withheld. If the county attorney refuses to consent to a defendant's participation in the Program, he/she shall state on record the reasons therefore.
3. Prior to approval for participation in the Program, the pretrial services officer shall present to the trial judge the comments and opinions, if any, of the arresting officer and/or victim of the alleged crime regarding the nature of the offense, the appropriateness of diversion, and the suggested terms of the

diversion contract. While not binding on the trial judge, such comments and opinions, if any, may be considered by the trial judge in determining approval for participation in the program.

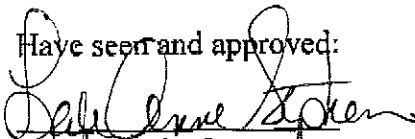
4. Upon approval for participation in the Program, the county attorney shall present to the trial judge any special terms, if any, which he/she believes should be included in the diversion contract. While such requests are not binding on the trial judge, they may be considered by the judge when approving the diversion contract.
5. Upon approval for participation in the Program, the defendant shall sign a diversion contract and a statement waiving his/her right to a speedy trial. Prior to signing such statements, the defendant shall be given the opportunity to consult with an attorney if he/she desires.
6. Participation in the Program shall not constitute an admission or presumption of guilt of the crime(s) charged, shall not be proof of guilt in any subsequent legal action, nor shall a Program participant be required to give a confession or admission of guilt.
7. All Program records and all statements made by a defendant to the diversion officer regarding the contract shall be privileged and confidential, and shall not be admissible or discoverable for any purpose. Such information shall be exempt from subpoena. However, Program staff, the trial judge and the chief district judge may access the information for Program review, monitoring and supervision. The information shall not be released to any other person or entity without prior written consent of the trial judge or the defendant. Nothing in this paragraph shall be deemed to prohibit release of information to the victim regarding a defendant's participation in the program.
8. The fee for participation in the Program shall be in an amount set by the Director of the Administrative Office of the Courts. The court may assess the fee on a sliding scale basis upon ability to pay or waive the fee entirely in the case of indigence.

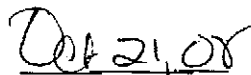
The Diversion Contract

1. Upon approval of participation in the Program, the defendant shall meet with a pretrial officer to establish a formal contract which specifies the court-ordered conditions, the referral services to be used, the length of the contract, and if required, the need for the defendant to make restitution, enter/complete a treatment program, or perform community service.
2. Individual contract lengths shall be determined by the trial judge, not to exceed twenty-four (24) months.

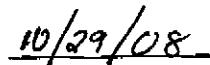
3. The Program participant shall be required to comply with all provisions of the diversion contract. If the Program participant fails to comply with the conditions of the contract, the diversion officer shall refer the participant to the trial judge for a determination of either termination or modification. The trial shall enter an order reflecting said determination. As with the original diversion contract, the participant shall agree to the contract modifications, if any, prior to reinstatement. Upon termination for non-compliance, the county attorney may initiate prosecution of the defendant upon the original criminal charges.
4. A program participant may terminate his/her contract, at any time, by submitting a written statement indicating same. Where termination is prior to the expiration of the contract period, the diversion officer shall notify the trial judge and refer the case to the county attorney for the resumption of prosecution.
5. Upon successful completion of the diversion contract, the charge(s) shall be formally and fully dismissed and all official records shall bear the notation that said charge(s) were dismissed with prejudice. The administrative record shall not be expunged, but, rather, shall be retained in conformity with the Kentucky Court of Justice Records Retention Schedule.
6. A Program participant may not have to appear before the court for the order of dismissal if he/she has fully completed the diversion contract; rather the pretrial services officer may appear to make his/her final report and recommend dismissal.

Have seen and approved:


Chief District Judge


Date


AOC General Counsel


Date